IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL (LODGING) NO.10 OF 2005
IN
COMPANY APPLICATION NO.170 OF 2003
AND
COMPANY APPLICATION NO.89 OF 2004
IN
COMPANY PETITION NO.73 OF 2000
WITH
COMPANY APPLICATION NO.344 OF 2005

1. M/s.Chemosyn Limited,
a Company incorporated under
the Companies Act, 1956, having its
Registered office at Themis House,
38, Suren Road, Andheri (East),
Mumbai - 400 093;

2. Samit Kantilal Shah,
age 46 years, residing at 602,
Palm Beach, Palm Beach Riviera Co-op.
Hsg.Society, Gandhi Gram Road,
Near Hare Krishna Temple,
Vile Parle (West),
Mumbai-400 049. ...Appellants

Versus

1. Unmesh Kantilal Shah,
age 48 years, residing at Prakash,
66, Swastik Society, J.V.P.D.,
5th Road, Vile Parle (West),
Mumbai - 400 056.

2. Smt.Prabhaben Kantilal Shah,
age 68 years, residing at Prakash,
66, Swastik Society, J.V.P.D.,
5th Road, Vile Parle (West),
Mumbai - 400 056.

3. Hanumant Holding Private Limited,
through Director Shri.Unmesh Shah,
having its registered office at
Sablipole, Khambhat, Gujarat. ...Respondents
(Original Petitioners)

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Mr.Shekhar Naphade with Mr.Sanjay Jain i/b
Mr.Nivit Srivastava for Appellants.

Mr.H.C.Mehta with Ms.Dipti Shah with Mr.S.Nagvadaria i/b M/s.Mehta & Co. for Respondents.

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CORAM: A.M.KHANWILKAR, J.

JUNE 23, 2005.

ORAL JUDGMENT :

1. Heard Counsel for the parties.

2. Admit.

3. Appeal is heard forthwith by consent of the parties, as short question is involved.

4. This Appeal takes exception to the order passed by the Company Law Board, Principal Bench, New Delhi dated April 4, 2005 in Company Application Nos.170 of 2003 and 89 of 2004 in Company Petition No.73 of 2000.

5. The Respondents took out Application under

Section 634A of the Companies Act (hereinafter referred to as the 'Act') read with Regulation 44 of the Company Board Rules and Regulation, 1981 for implementation/execution of the order dated 15th July 2002 passed in Company Application No.86 of 2003 and order dated 13th December 2002 in Company Application No.71 of 2002.

6. By the impugned order, the Company Law Board has observed that to get the said orders executed, it was appointing retired Judge of the Supreme Court as Executing Authority. It is noted in the order that the Appellants own certain properties/assets and the dues of the Respondents herein, can be settled out of sale of such properties/assets. It is then observed that the Executing Authority so appointed will have full powers to dispose of those assets/properties, either by way of auction or in any other manner, as he deems fit. Insofar as the charges of the Executing Authority, it is provided in the order that the Executing Authority after deducting all the expenses incurred by it on the assignment, including his fees as may be determined by him, may

adjust against the sale proceeds.

7. The impugned order does not specifically provide as to which property of the Company shall be put to sale. Whereas, condition No.1 only mentions that the property of the Company at Vapi, the details of which are to be furnished by the Appellants to the Executing Authority may be put to sale and if the sale proceeds of such property are insufficient to satisfy the dues of the Respondents herein, the Executing Authority is granted liberty to sale/auction the Metacin brand owned by the Appellant Company. That, however, was to be done after giving one month’s notice to the Appellants to enable them to arrange for the funds to clear the balance dues to the Respondents herein, if they so desire to avoid disposal of their brand. The order then provides that if the sale proceeds were found to be insufficient to clear the dues of the Respondents herein, then the Executing Authority was at liberty to sell/auction the Andheri property after giving one month’s notice. The details of the property were to be furnished by the Respondents herein. It is lastly provided that if

any balance amount is left after discharging the dues of the Respondents, the same was to be paid to the Appellants herein. This decision is subject matter of challenge in the present Appeal.

8. Essentially, the argument before this Court is that for the nature of order passed by the Company Law Board, the same is unknown to provisions of Section 634A of the Act. It is contended on behalf of the Appellants that the scope of Section 634A of the Act is well defined. It, no doubt, enables the Company Law Board to enforce any order made by it, but that has to be done in the same manner, as if it were a decree made by a Court in a Suit pending therein. It is contended that as the Company Law Board has thought it appropriate to appoint some other person as the Executing Authority, which presupposes that the Company Law Board itself was unable to execute its own order; and if it is so, it had no option but to send the matter to the Civil Court within local limits of which jurisdiction the Company Registrar’s Office was situated. It is then argued that the order provides for complete authority to

the Executing Authority appointed by the Company Law Board to dispose of the property of the Appellant Company. Besides, the order also enables the Executing Authority to deduct such amount as it may deem appropriate towards expenses incurred for the assignment as well as his fees. That is not all. The order does not specify the properties which ought to be put to auction or sale by the Executing Authority, assuming that it was open to the Board to nominate person of its choice to facilitate execution of its order. On the above argument, it is contended that the impugned order is clearly outside the purport of Section 634A of the Act and cannot be sustained in law.

9. Counsel for the Respondents would, however, justify the order passed by the Company Law Board. According to him, the Company Law Board was of the opinion that the orders in question can be executed by itself. But only to facilitate the execution, has thought it appropriate to take assistance of retired Judge of the Supreme Court, who would himself supervise the process of disposal of the assets and properties of the Company.

According to him, the order is not in the nature of delegation of the judicial functions of the Company Law Board, but only permits the Executing Authority so appointed under the orders, to dispose of the properties as may be appropriate, which again, can be and will have to be subject to the final orders to be passed by the Company Law Board for the purpose of confirmation of sales or any related issues. On this argument, the Counsel for the Respondents submits that no question of law arises for consideration of this Court, for which, this Appeal should be entertained.

10. Having considered the rival submissions, I have no hesitation in taking the view that the Appeal raises substantial question of law, amongst others, interpretation of provisions of Section 634A of the Act. Section 634A of the Act reads thus :

> **"634A.-** Any order made by the Company Law Board may be enforced by that Board in the same manner as if it were a decree made by a Court in a suit pending therein, and it shall be lawful for that Board to send, in the case of its inability to execute such order, to the Court within the local limits of whose jurisdiction,-

> (a) in the case of an order against a company, the registered office of the company is situated, or
>
> (b) in the case of an order against any other person, the person concerned voluntarily resides, or carries on business or personally works for gain".

11. On plain language of this provision, it is seen that it is open to the Company Law Board to enforce its own order in the same manner as if it were a decree made by a Court in a Suit pending therein. However, this authority is circumscribed by the requirement that the Board must be of the view that the order can be so executed by itself. On the other hand, if the Board was of the view that it was not possible for the Board to get the order executed itself, then the Board would have had no option but to refer the matter to the Civil Court within the local limits of whose jurisdiction the registered office of the Company is situated, as the order was against the Company. Before proceeding in the matter either way, the Board is expected to record its satisfaction in that behalf.

12. In the present case, the first requirement

is satisfied, as the Board has observed in the impugned order that it has become necessary to exercise powers under Section 634A of the Act to get the orders passed by it executed. While doing so, the Board is competent to take the assistance of any other person. There is nothing in the Act to preclude the Board to do so. In other words, merely because the Board has appointed retired Judge of the Supreme Court to facilitate the disposal of the assets and properties of the Company, that by itself, will not be sufficient to presume that the Board is unable to execute its order; and therefore, to hold that it ought to have referred the matter to the Civil Court.

13. However, I am disposed of to accept the objection taken on behalf of the Appellants that even if the Board could have appointed some third person to facilitate disposal of the properties, it was not open to it to give full authority to such person to dispose of the properties of the Company in the manner he may think it appropriate, so much so, to permit him to deduct all the expenses incurred on the assignment including his fees, as

may be determined by him. Moreover, the order in question does not specifically spell out as to which property of the Company should be put to sale and the manner of disposal thereof.

14. It would be a different matter if the Board, while nominating a Special Officer to facilitate sale of the properties of the Company, was to clearly spell out the details of the properties that will be put to sale and to further provide that the sale will be in conformity with the principles provided in the scheme of Order XXI of the Code of Civil Procedure, including that the sale will have to be confirmed by the Board. Even the question regarding the quantum of expenses to be incurred on the assignment or the fees of the nominated Officer which can be deducted from the sale proceeds, is required to be decided by the Board. All those matters cannot be left to the discretion of the Special Officer appointed by the Board, whose role is only to facilitate the sale. For, those matters are to be decided by the Board, which indeed, will be judicial decision to be reached after considering objections, if any.

Besides, the order ought to provide for the mechanism and the modalities of disposal of the properties, albeit by the Special Officer. The impugned order as mentioned earlier, is completely silent on these aspects. Rather it gives an impression that complete authority is given to the Special Officer appointed under the order, including on matters which are within the domain of the Board and are expected to be discharged only by the Board.

15. In the circumstances, the order under challenge cannot be sustained in law, for which reason, the same is set-aside.

16. While allowing this Appeal with no order as to costs, the Applications, which were originally preferred by the Respondents, on which the impugned order is passed, are restored to the file of the Board to their original numbers. The Board shall reconsider the said Applications and pass appropriate orders, as may be warranted, keeping in mind, observations made in this order. Ordered accordingly.

A.M.KHANWILKAR, J.